

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

Jonathan R., minor by Next)	
Friend Sarah DIXON, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
v.)	Case No. 3:19-cv-00710
)	
Jim JUSTICE, in his official capacity as)	
the Governor of West Virginia, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**DECLARATION OF MARCIA ROBINSON LOWRY IN SUPPORT OF PLAINTIFFS’
MOTION FOR SANCTIONS**

I, Marcia Robinson Lowry, declare:

1. I am counsel for Plaintiffs in the above-captioned action and submit this Declaration authenticating the attached Exhibits in support of Plaintiffs’ pending Motion for Sanctions (ECF No. 377).

2. Attached hereto as Exhibit A is a true and accurate copy of the transcript of Plaintiffs’ deposition of Danielle Cox, Chief Information Security Officer for the West Virginia Office of Technology (“WVOT”), taken on December 8, 2023.

3. Attached hereto as Exhibit B is a true and accurate copy of the accompanying Exhibits 1 through 10 to the deposition of Danielle Cox.

4. Attached hereto as Exhibit C is a true and accurate copy of an affidavit signed by Michael J. Folio dated December 13, 2023.

5. Plaintiffs respectfully request that the Court consider Exhibits A, B, and C in connection with the Court’s deliberations on Plaintiffs’ pending Motion for Sanctions.

6. The testimony of Danielle Cox and the Affidavit of Michael J. Folio support that

Defendants were not only aware of WVOT's policies regarding the destruction of data 30 days after the authorization to deprovision an employee account, but that DHHR had been specifically requested to preserve the data of Bill Crouch in other matters immediately following his resignation and failed to do so. *See, e.g.*, Ex. A at Tr. 41:2-18; 52:16-53:8; 64:3-66:18; 67:10-14; 68:2-69:24; 71:3-18; 72:4-21; 73:5-74:12; 75:9-76:15, 80:19-81:1; 85:12-86:14; Ex. B at Ex. 10 to Danielle Cox's Deposition; Ex. C ¶¶ 9-12. Michael Folio had specific conversations with both April Robertson, DHHR General Counsel, and Bill Crouch regarding the 30-day window in which ESI needed to be preserved before it would be deleted. Ex. C ¶ 12. Defendants were aware that their December 4, 2019 "litigation hold" was by no means sufficient to preserve emails and made no further attempts to preserve them. *See, e.g.*, Ex. A at Tr. 64:3-66:18; 67:10-15; 68:2-69:24; 71:3-18; 77:1-11; 89:5-9; 90:6-14.

7. These new facts have emerged from discovery following the submission of Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Sanctions and support that Defendants' spoliation was not merely reckless but was intentional.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on December 14, 2023.

A handwritten signature in dark ink, appearing to read "Marcia Lowry", with a stylized, flowing script.

Marcia Robinson Lowry

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

Jonathan R., minor by Next)	
Friend Sarah DIXON, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
v.)	Case No. 3:19-cv-00710
)	
Jim JUSTICE, in his official capacity as)	
the Governor of West Virginia, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

CERTIFICATE OF SERVICE

I, J. Alexander Meade, counsel for Plaintiffs, hereby certify that I have this 14th day of December, 2023, electronically filed the foregoing “***Declaration of Marcia Robinson Lowry in Support of Plaintiffs’ Motion for Sanctions***” as well as its accompanying Exhibits A, B, and C with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

Philip J. Peisch, Esquire
Caroline M. Brown, Esquire
Julia Siegenberg, Esquire
Rebecca Wolfe, Esquire
Brown & Peisch PLLC
1233 20th Street NW, Suite 505
Washington, DC 20001

Steven R. Compton, Esquire
West Virginia Attorney General’s Office
812 Quarrier Street, 2nd Floor
Charleston, WV 25301

/s/ J. Alexander Meade
J. Alexander Meade (WVSB #13021)